

Rukavina, Davor

From: Berghman, Thomas
Sent: Tuesday, October 10, 2023 4:11 PM
To: Rukavina, Davor
Subject: FW: Prosperity Settlement Goodman

From: Adam Langley <Adam.Langley@butlersnow.com>
Sent: Friday, September 1, 2023 12:11 PM
To: Berghman, Thomas <tberghman@munsch.com>
Cc: Scott <scott@scottseidel.com>; Rukavina, Davor <drukavina@munsch.com>; Schottenstein, Noah <Noah.Schottenstein@us.dlapiper.com>; Muenker, James <James.Muenker@us.dlapiper.com>; Cam Hillyer <Cam.Hillyer@butlersnow.com>
Subject: RE: Prosperity Settlement Goodman

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The Trustee agreed to accept \$100k as a surcharge in the original motion. FedEx and ARRIS' objection created an additional \$250k in value that the Trustee did not obtain. And, now, after causing FedEx and ARRIS to spend fees and costs, the Trustee asks FedEx and ARRIS to commit to a number 4 multiples over the \$100k he was willing to take. To be clear, we will seek to have a substantial contribution paid to FedEx and ARRIS out of the \$250k that the Trustee did not obtain. We will move forward with litigation if we must, but I'd ask you to reconsider your position. We are available to discuss.

Adam M. Langley
Butler Snow LLP

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From: Berghman, Thomas <tberghman@munsch.com>
Sent: Friday, September 1, 2023 11:41 AM
To: Adam Langley <Adam.Langley@butlersnow.com>
Cc: Scott <scott@scottseidel.com>; Rukavina, Davor <drukavina@munsch.com>; Schottenstein, Noah <Noah.Schottenstein@us.dlapiper.com>; Muenker, James <James.Muenker@us.dlapiper.com>; Cam Hillyer <Cam.Hillyer@butlersnow.com>
Subject: Re: Prosperity Settlement Goodman

Adam- As advised on the call earlier this week, there was little to no flexibility regarding items 1 and 2 in the counter sent last Friday. The split of proceeds after the Prosperity Payments is where FedEx and Arris can receive a return in excess of their pro-rata shares of the estate for taking on risk. But given the Trustee's assessment of the merits of the different

claims at issue, the counter below is not acceptable, including because the “near certain” money is less than the 9019, where it was advised that there would need to be greater “near certain” money in any new deal to compensate for delay, litigation risk, and additional fees.

Thank you,

Thomas D. Berghman

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800 / Dallas, Texas 75201-6659

Direct: +1.214.855.7554 / tberghman@munsch.com / munsch.com

On Aug 30, 2023, at 1:22 PM, Adam Langley <Adam.Langley@butlersnow.com> wrote:

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CONFIDENTIAL SETTLEMENT COMMUNICATION FRE408

Here is the counter on the waterfall from FedEx/ARRIS (subject to final signoff from ARRIS’ business persons).

1. First \$100k to FedEx/ARRIS for fees and expenses
2. Next \$250k to Trustee/Estate
3. Next \$150k split equally between Estate/FedEx/ARRIS
4. Next \$600k split equally between Estate/FedEx/ARRIS
5. Remainder split 90% to FedEx/ARRIS (sharing based on claims) and 10% to Estate.

We’d be happy to discuss. The first three tranches (above line) account for the roughly \$500k of Prosperity Payments. The last two tranches (below line) account for the Subject Funds. We believe the most likely outcome is a settlement that involves Prosperity paying the \$4,663,804.68 it already agreed to pay and the Estate/Creditor group splitting this payout with Bondholders. Under this scenario, we believe the 4th and 5th tranches have substantial value. Moreover, this proposal removes all litigation risk and costs from the estate – all of the objection to the 9019 motion, appellate costs if Trustee is successful on 9019 motion, any objection to any fee applications/commissions, and any costs associated with pursuing claims if Trustee is unsuccessful on 9019 motion. Depositions and hearing get cancelled and everyone turns their focuses on pursuing other assets and claims that may return additional real value.

Please get us as quick a response as possible because we’d like to let other parties know that depositions and the hearing will not be happening.

Thanks,

Adam

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From: Berghman, Thomas <tberghman@munsch.com>
Sent: Friday, August 25, 2023 6:37 PM
To: Adam Langley <Adam.Langley@butlersnow.com>; 'Scott' <scott@scottseidel.com>; Rukavina, Davor <drukavina@munsch.com>
Cc: 'Schottenstein, Noah' <Noah.Schottenstein@us.dlapiper.com>; 'Muenker, James' <James.Muenker@us.dlapiper.com>; Cam Hillyer <Cam.Hillyer@butlersnow.com>
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Adam-

Thank you for the proposal. The Trustee counters with the below waterfall:

1. FedEx/Arris expenses up to \$75,000;
2. Estate up to \$425,000;
3. FedEx/Arris/Estate split three ways each dollar up to next \$900,000;
4. FedEx/Arris take 75% and Estate takes 25% of remainder (with FedEx/Arris not sharing in Estate's remainder)

Alternatively, the Trustee is open to discussing limited-recourse DIP financing from FedEx/Arris to pursue this litigation.

Thank you,

Thomas D. Berghman

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From: Adam Langley <Adam.Langley@butlersnow.com>
Sent: Wednesday, August 23, 2023 5:06 PM
To: 'Scott' <scott@scottseidel.com>; Rukavina, Davor <drukavina@munsch.com>
Cc: Berghman, Thomas <tberghman@munsch.com>; 'Schottenstein, Noah' <Noah.Schottenstein@us.dlapiper.com>; 'Muenker, James' <James.Muenker@us.dlapiper.com>; Cam Hillyer <Cam.Hillyer@butlersnow.com>
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CONFIDENTIAL SETTLEMENT COMMUNICATION SUBJECT TO FRE 408

Here's the proposed waterfall structure.

Estate/Trustee would assign 548/544 claims against Prosperity related to Prosperity Payments (\$513,742.92) and Subject Funds (\$4,4563,804.68) to FedEx and ARRIS subject to any recoveries on those claims being paid consistent with the following waterfall structure.

Waterfall:

1. FedEx/ARRIS Expenses
2. Trustee Carveout up to \$150k
3. FedEx/ARRIS/Estate split three ways each dollar up to next \$900k with estate using its split for admin costs towards other claims
4. FedEx/ARRIS take 90%, and Estate takes 10%, of remainder with FedEx/ARRIS not sharing in Estate's remainder

We estimate the FedEx/ARRIS Expenses will be \$50-75k if tried but less if the MSJ is successful.

Our calculation for the Estate/Trustee under this waterfall structure is as follows:

1. Trustee Carveout - \$150k (near certainty because \$513k Prosperity Payments are not contested by Bondholders and will be recovered)
2. Estate/Trustee Split – up to \$300k (approx. \$105k of \$300k is near certainty because of \$513k Prosperity Payment recovery)
3. Estate/Trustee Share – up to \$387,754.76 (rough estimate)
TOTAL UPSIDE TO ESTATE/TRUSTEE = \$837,754.76 with \$255k near certainty

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From: Scott <scott@scottseidel.com>
Sent: Wednesday, August 23, 2023 10:35 AM
To: Adam Langley <Adam.Langley@butlersnow.com>; 'Rukavina, Davor' <drukavina@munsch.com>
Cc: 'Berghman, Thomas' <tberghman@munsch.com>; 'Schottenstein, Noah' <Noah.Schottenstein@us.dlapiper.com>; 'Muenker, James' <James.Muenker@us.dlapiper.com>; Cam Hillyer <Cam.Hillyer@butlersnow.com>
Subject: RE: Prosperity Settlement Goodman

Thx

Scott Seidel, Esq.
Direct dial: 214-234-2503

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From: Adam Langley <Adam.Langley@butlersnow.com>
Sent: Wednesday, August 23, 2023 10:34 AM
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Subject: RE: Prosperity Settlement Goodman

4:30 works. I'll circulate a zoom invite.

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Subject: RE: Prosperity Settlement Goodman

Good morning.
Yes, we are available –say 4:30?

Scott Seidel, Esq.
Direct dial: 214-234-2503

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Cc: Berghman, Thomas <tberghman@munsch.com>; Schottenstein, Noah

<Noah.Schottenstein@us.dlapiper.com>; 'Muenker, James' <James.Muenker@us.dlapiper.com>; Cam

Hillyer <Cam.Hillyer@butlersnow.com>

Subject: Prosperity Settlement

CONFIDENTIAL SETTLEMENT COMMUNICATION UNDER FRE 408

Scott and Davor,

Can you be available to speak with FedEx/ARRIS counsel after 4pm today? FedEx and ARRIS would like to present a proposal to take over the litigation with Prosperity and avoid the looming contested matter on the 9019 Motion. We'd like to get the proposal vetted by you before discovery is produced and witnesses are disclosed on Friday.

Let us know.

Thanks

Adam

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